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No. 86-1866

In the Supreme Court of the United States

OCTOBER TERM, 1987

STATE OF ALABAMA, PETITIONER

v.

RICHARD E. LYNG, SECRETARY OF AGRICULTURE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether Section 1505 of the Food Security Act of 1985, Pub. L. No. 99-198, 99 Stat. 1567, which bars a State from participating in the federal food stamp grant program "if the Secretary [of Agriculture] determines that State or local sales taxes are collected within that State on purchases of food made with [food stamp] coupons," is a valid exercise of Congress's authority under the Spending Clause.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	1
Argument	5
Conclusion	8

TABLE OF AUTHORITIES

Cases:

Garcia v. *San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985)	7
Lau v. *Nichols*, 414 U.S. 563 (1974)	7
Oklahoma v. *Civil Service Comm'n*, 330 U.S. 127 (1947)	7
Oklahoma v. *Schweiker*, 655 F.2d 401 (D.C. Cir. 1981)	7
South Dakota v. *Dole*, No. 86-260 (June 23, 1987)	5, 6, 7
Steward Machine Co. v. *Davis*, 301 U.S. 548 (1937)	6

Constitution and statutes:

U.S. Const.:	
Art. I (Commerce Clause)	7
Amend. X	4, 7
Pub. L. No. 99-198, § 1505, 99 Stat. 1567	4, 5, 6, 7
§ 1505(a), 99 Stat. 1567 (codified at 7 U.S.C. (Supp. III) 2013(a))	2- 3
7 U.S.C. 2011	1, 2, 6
7 U.S.C. (& Supp. III) 2013(a)	2, 3
7 U.S.C. 2013-2017	2
7 U.S.C. 2020	2
7 U.S.C. 2018-2025	2
29 U.S.C. 794	7
42 U.S.C. 2000d	7
42 U.S.C. 6101	7

Statutes—Continued: Page

Ala. Code (1975 & Supp. 1986):
§§ 40-23-1 to 40-23-4 3
§ 40-23-35 (1975) 4

Miscellaneous:

S. Rep. 99-145, 99th Cong., 1st Sess. (1985) 2, 3, 6

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-8a) is reported at 811 F.2d 567. The opinion of the district court (Pet. App. 9a-15a) is unreported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 17a-18a) was entered on March 2, 1987. The petition for a writ of certiorari was filed on May 26, 1987. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Food Stamp Program is a cooperative federal-state grant program designed to "promote the general welfare, [and] to safeguard the health and well-being of the Nation's population by raising levels of nutrition among low-income households" (7 U.S.C. 2011). It accomplishes this goal by enabling low-income households

to "obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households who apply for participation" (*ibid.*). Food stamp coupons are distributed free of charge to eligible households. Persons who receive the coupons may use them to purchase food items at approved retail outlets. The stamps are ultimately redeemed for their full face value by the federal government. 7 U.S.C. 2013-2017.

The Food Stamp Program is administered at the federal level by the Food and Nutrition Service (FNS) of the Department of Agriculture. The FNS oversees state implementation of the program, prints and processes the coupons, and certifies the retail stores that are authorized to redeem food stamps. The federal government pays the full cost of food stamp benefits, its own administrative costs, and approximately 50% of eligible state and local administrative expenses. S. Rep. 99-145, 99th Cong., 1st Sess. 1, 215 (1985); 7 U.S.C. 2018-2025.

A State's participation in the Food Stamp Program is voluntary. S. Rep. 99-145, *supra*, at 215; 7 U.S.C. 2013(a). States that choose to participate submit a plan of operation that must be approved by the Secretary. States are responsible for certifying the eligibility of applicant households, arranging for the issuance of monthly benefits to eligible recipients, and maintaining a system of control and accountability. 7 U.S.C. 2020.

Congress reauthorized the Food Stamp Program in 1985 and, at the same time, made "certain changes in program operations in order to provide more equitable treatment of recipients within the Food Stamp Program by closing loopholes and establishing more consistent and logical treatment of certain sources of income and certain expenses" (S. Rep. 99-145, *supra*, at 224). One of these changes was effectuated by Section 1505(a) of Pub. L. No. 99-198, 99 Stat. 1567, which provides that "a State may not participate in the food stamp program if the Secretary

determines that State or local sales taxes are collected within that State on purchases of food made with [food stamp] coupons" (codified at 7 U.S.C. (Supp. III) 2013(a)).

Congress observed that, at the time of the 1985 amendment, about 17 States imposed sales taxes on food stamp purchases and "approximately $107-$140 million of food stamp benefits will be diverted from actual food purchases to pay for sales taxes imposed on food stamp purchases in certain States during fiscal year 1986" (S. Rep. 99-145, *supra*, at 249-250). Congress found that these sales taxes reduced the purchasing power of the food stamp allotment "relative to the [purchasing power of] recipients in States with no such sales taxes" (*id.* at 252). Moreover, because "[a]pplicable sales taxes on food purchases are not included in formulating the cost of the [thrifty food] plan" that is the basis for calculating the level of benefits necessary to enable recipients to afford a nutritious low-cost diet, a recipient whose purchases were taxed would not receive the benefits necessary to obtain the recommended diet (*ibid.*). In addition, the sales taxes were found to effect "an indirect Federal subsidy—through the Federal Food Stamp Program—to those State and local governments imposing a sales tax on food stamp purchases" (*ibid.*).

Congress concluded that "[t]he national interest in protecting the buying power of food stamp recipients" was "paramount" and therefore outweighed any possible interference with state taxing authority (S. Rep. 99-145, *supra*, at 252). Moreover, "States remain free to reject this condition to participation in the Food Stamp Program and forego the benefits of the program to its citizens" (*ibid.*).

2. Petitioner imposes a state-wide sales tax of four percent upon food purchases, and does not exempt purchases of food with food stamps from this tax. See Ala. Code §§ 40-23-1 to 40-23-4 (1975 & Supp. 1986). A portion

of the revenue from this tax is allocated to pay the administrative expenses of the State's food stamp program. See Ala. Code § 40-23-35 (1975).

Petitioner commenced this action in the United States District Court for the Middle District of Alabama seeking a declaratory judgment that Section 1505 is unconstitutional. The district court dismissed petitioner's complaint (Pet. App. 9a-15a).

Petitioner argued that the statutory condition is invalid under the Tenth Amendment because it is aimed at a State's taxing power rather than its spending power. The district court held that there was no Tenth Amendment violation, stating that "a state's power to tax is no more fundamental than its power to spend" (Pet. App. 14a). "If anything," the court said, "Alabama's power to tax in this case is less protected than its power to spend because the sales tax is paid for by 100 percent federally subsidized food stamp coupons. Indeed, [the government] makes a persuasive argument that Congress properly and constitutionally exempted food stamp purchases from state taxation because such taxation results in an indirect subsidy to the state" (*ibid.*).[1]

The court of appeals unanimously affirmed the judgment of the district court on the basis of the district court's opinion (see Pet. App. 2a).

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[1] Petitioner also contended that Section 1505 does not constitute a condition upon a grant of federal funds to the States, asserting that the food stamp program directly entitles eligible recipients to benefits and is not conditioned upon a State's agreement to participate in the program. The district court squarely rejected petitioner's claim, stating that "[t]he Food Stamp Program was designed from its inception in 1964 to be implemented only in states 'wishing to take part' " (Pet. App. 12a (citations omitted)).

ARGUMENT

This Court's recent decision in *South Dakota* v. *Dole*, No. 86-260 (June 23, 1987), confirms that Congress acted well within its constitutional authority when it conditioned federal grants under the Food Stamp Program upon a State's agreement not to tax purchases of food made with such stamps. Further review by this Court is not warranted.

This Court has observed that "Congress may attach conditions on the receipt of federal funds, and has repeatedly employed the power 'to further broad policy objectives by conditioning receipt of federal moneys upon compliance by the recipient with federal statutory and administrative directives' " (*Dole*, slip op. 3 (citations omitted)). This power is extremely broad: "objectives not thought to be within Article I's 'enumerated legislative fields,' may nevertheless be attained through the use of the spending power and the conditional grant of federal funds" (*ibid.* (citation omitted)).

The Spending Power is, of course, subject to several limitations. First, "the exercise of the spending power must be in pursuit of 'the general welfare.' " Second, a condition on a State's receipt of federal funds must be " 'unambiguous[].' " Third, a condition on a federal grant might be improper if it is "unrelated 'to the federal interest in particular national projects or programs.' " Fourth, "other constitutional provisions may provide an independent bar to the conditional grant of federal funds." Finally, "in some circumstances the financial inducement offered by Congress might be so coercive as to pass the point at which 'pressure turns into compulsion.' " *Dole*, slip op. 3-4, 7 (citations omitted).

Petitioner does not assert that Section 1505 infringes the first four restrictions. Nor could it advance such an argument. The Food Stamp Program plainly furthers the general welfare by "raising levels of nutrition among low-

income households" (7 U.S.C. 2011); the condition imposed by Section 1505 furthers the same interest by "protecting the buying power of food stamp recipients" (S. Rep. 99-145, 99th Cong., 1st Sess. 252 (1985)). Second, Section 1505 is unambiguous: the provision by its terms bars a State from participating in the Food Stamp Program if the State taxes purchases made with food stamps.[2]

Third, the condition is obviously related to the federal interest in the Food Stamp Program. Congress found that the condition is necessary to prevent erosion of the buying power of food stamp recipients that would thwart the achievement of the goals of the federal program (see page 3, *supra*). Finally, Section 1505 does not violate any independent constitutional limitation upon government authority. "Were [petitioner] to succumb to the blandishments offered by Congress and [exempt food stamp purchases from its sales tax], the State's action in doing so would not violate the constitutional rights of anyone" (*Dole*, slip op. 7).

Petitioner's sole argument (Pet. 9-11) is that the condition imposed by Section 1505 is coercive. This Court rejected the identical argument in *Dole*. Quoting a passage from *Steward Machine Co.* v. *Davis*, 301 U.S. 548, 589-590 (1937), the Court observed (slip op. 8):

> " '[E]very rebate from a tax when conditioned upon conduct is in some measure a temptation. But to hold that motive or temptation is equivalent to coercion is to plunge the law in endless difficulties. The outcome

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[2] Petitioner suggests (Pet. 11-12) that the condition is improper because it was added after petitioner began to participate in the Food Stamp Program. But Section 1505 is not a retroactive condition upon federal grants made in prior years; it applies to subsequent grants. This Court has never suggested that the Constitution imposes an independent limit upon Congress's authority to fine-tune a grant program *prospectively* simply because that fine tuning may result in the adoption of new grant conditions.

> of such a doctrine is the acceptance of a philosophical determinism by which choice becomes impossible. Till now the law has been guided by a robust common sense which assumes the freedom of the will as a working hypothesis in the solution of its problems.' "

This Court has never indicated that a condition is coercive simply because entitlement to an entire federal grant is dependent upon compliance with the condition. See, *e.g.*, *Lau* v. *Nichols*, 414 U.S. 563 (1974); *Oklahoma* v. *Civil Service Comm'n*, 330 U.S. 127 (1947); *Oklahoma* v. *Schweiker*, 655 F.2d 401, 413-414 (D.C. Cir. 1981) (collecting cases). Section 1505 directly furthers the purposes of the Food Stamp Program, and petitioner remains free to reject the condition and decline to participate in the Food Stamp Program. The economic choice faced by petitioner—"either giving up approximately $11.5 million in annual state taxes or giving up $287 million a year in federal benefits for its citizens" (Pet. 11)—simply is not coercive.[3]

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[3] Indeed, a contrary conclusion would call into question the validity of all statutes that tie a particular condition to the entire amount of a federal grant. See, *e.g.*, 29 U.S.C. 794 (prohibiting discrimination on the basis of handicap); 42 U.S.C. 2000d (prohibiting discrimination on the basis of race, color, or national origin); 42 U.S.C. 6101 (age discrimination).

Petitioner invokes (Pet. 13-14) this Court's decision in *Garcia* v. *San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985), but that case addressed the Tenth Amendment limits on Congress's regulatory authority under the Commerce Clause. The Court has recognized that "a perceived Tenth Amendment limitation on congressional regulation of state affairs [does] not concomitantly limit the range of conditions legitimately placed on federal grants" (*Dole*, slip op. 6).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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